

### § 3.658

### 38 CFR Ch. I (7–1–04 Edition)

(b) *Children's awards.* (1) Where a surviving spouse establishes entitlement and:

(i) Payments were being made for a child or children at a lower monthly rate than that provided where there is a surviving spouse, the award to the surviving spouse will be effective the date provided by the applicable law, and will be the difference between the rate paid for the children and the rate payable for the surviving spouse and children. The full rate will be payable for the surviving spouse effective the day following the date of last payment for the children;

(ii) Payments were being made for a child or children at the same or higher monthly rate than that provided where there is a surviving spouse, the award to the surviving spouse will be effective the day following the date of last payment on the awards on behalf of the children.

(2) Where a surviving spouse has received benefits after entitlement was terminated and,

(i) The child or children were entitled to a lower monthly rate, the award to the surviving spouse will be amended to authorize payment at the rate provided for the children as if there were no surviving spouse, covering the period from the date the surviving spouse's entitlement terminated to the date of last payment. The award for the child or children will be made effective the following day.

(ii) The child or children were entitled to a higher monthly rate, the award to the surviving spouse will be discontinued effective date of last payment. The award to the children will be effective the day following the date the surviving spouse's entitlement terminated and will be the difference between the rate payable for the children and the rate paid on the surviving spouse's award. The full rate will be payable for the children effective the day following the date of last payment to the surviving spouse.

[39 FR 20204, June 7, 1974, as amended at 44 FR 45942, Aug. 6, 1979]

#### § 3.658 Offsets; dependency and indemnity compensation.

(a) When an award of dependency and indemnity compensation is made cov-

ering a period for which death compensation or benefits under the Federal Employee's Compensation Act, based on military service, have been paid to the same payee based on the same death, the award of dependency and indemnity compensation will be made subject to an offset of payments of death compensation or benefits under the Federal Employees' Compensation Act over the same period.

(b) When an award of dependency and indemnity compensation is made covering a period for which death benefits have been paid to the same payee based on the death of another spouse the award will be made subject to an offset of payments of death pension or compensation, or dependency and indemnity compensation over the same period in the case of the other spouse.

(Authority: 38 U.S.C. 103(d)(2), 5304(b)(3))

[41 FR 17387, Apr. 26, 1976]

#### § 3.659 Two parents in same parental line.

The provisions of this section are applicable for periods commencing on or after January 1, 1957 in cases involving payments of death compensation or dependency and indemnity compensation, and in addition, for periods commencing on or after June 9, 1960, in cases involving payments of death pension based on death on or after that date.

(a) If death pension, compensation or dependency and indemnity compensation is payable based on the service of one parent, an award of such benefits to or on account of a child will be made subject to any payments of these benefits made to or on account of that child over the same period of time based on the service of another parent in the same parental line.

(b) Any reduction or discontinuance of an award to the child or to a surviving spouse will be effective the day preceding the commencing date of death pension, compensation, or dependency and indemnity compensation or, under the circumstances described in § 3.707, the commencing date of dependents' educational assistance under 38 U.S.C. ch. 35, to or on account of the child based on the service of another parent in the same parental line. Any

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increase to a surviving spouse or another child will be effective the commencing date of the award to the child.

CROSS REFERENCE: Two-parent cases. See § 3.503(a)(7). Two parents in same parental line. See § 3.703.

[27 FR 4917, May 25, 1962, as amended at 29 FR 9564, July 15, 1964; 41 FR 17387, Apr. 26, 1976]

### § 3.660 Dependency, income and estate.

(a) *Reduction or discontinuance*—(1) *General.* A veteran, surviving spouse or child who is receiving pension, or a parent who is receiving compensation or dependency and indemnity compensation must notify the Department of Veterans Affairs of any material change or expected change in his or her income or other circumstances which would affect his or her entitlement to receive, or the rate of, the benefit being paid. Such notice must be furnished when the recipient acquires knowledge that he or she will begin to receive additional income or when his or her marital or dependency status changes. In pension claims subject to § 3.252(b) or § 3.274 and in compensation claims subject to § 3.250(a)(2), notice must be furnished of any material increase in corpus of the estate or net worth.

(2) *Effective dates.* Where reduction or discontinuance of a running award of section 306 pension or old-law pension is required because dependency of another person ceased due to marriage, annulment, divorce or death, or because of an increase in income, which increase could not reasonably have been anticipated based on the amount actually received from that source the year before, the reduction or discontinuance shall be made effective the end of the year in which the increase occurred. Where reduction or discontinuance of a running award of improved pension or dependency and indemnity compensation is required because of an increase in income, the reduction or discontinuance shall be made effective the end of the month in which the increase occurred. Where reduction or discontinuance of a running award of any benefit is required because of an increase in net worth or corpus of estate, because dependency of

a parent ceased, or because dependency of another person ceased prior to October 1, 1982, due to marriage, annulment, divorce, or death, the award shall be reduced or discontinued effective the last day of the calendar year in which the increase occurred or dependency ceased. Except as noted in this subparagraph for section 306 or old-law pension, where the dependency of another person ceased on or after October 1, 1982, due to marriage, annulment, divorce or death, the reduction or discontinuance shall be effective the last day of the month in which dependency ceased.

(Authority: 38 U.S.C. 5112(b))

(3) *Overpayments.* Overpayments created by retroactive discontinuance of benefits will be subject to recovery if not waived. Where dependency and indemnity compensation was being paid to two parents living together, an overpayment will be established on the award to each parent.

(b) *Award or increase; income.* Where pension or dependency and indemnity compensation was not paid for a particular 12-month annualization period because the claim was disallowed, an award was deferred under § 3.260(b) or § 3.271(f), payments were discontinued or made at a lower rate based on anticipated or actual income, benefits otherwise payable may be authorized commencing the first of a 12-month annualization period as provided in this paragraph. In all other cases, benefits may not be authorized for any period prior to the date of receipt of a new claim.

(1) *Anticipated income.* Where payments were not made or were made at a lower rate because of anticipated income, pension or dependency and indemnity compensation may be awarded or increased in accordance with the facts found but not earlier than the beginning of the appropriate 12-month annualization period if satisfactory evidence is received within the same or the next calendar year.

(Authority: 38 U.S.C. 5110(h))

(2) *Actual income.* Where the claimant's actual income did not permit payment, or payment was made at a lower rate, for a given 12-month